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distracted, fumbling way, which made it impossible for them to tell whether his conduct at the dinner-table was the legitimate effect of the drug, one of the main objects of which was to unsettle his mind, or only the ordinary working of his strangely-veiled intellect. The story of Tacitus is perfectly clear and coherent in every respect, and certainly quite as philosophical as that of Dion, who ascribes the feeble action of the poison, (which, by the way, he makes Agrippina herself experiment with on the Emperor before she employed Locusta,) either to the indulgence of Claudius in wine, or to the potent mithridates habitually used by the Roman Emperors.

Mr. Merivale goes on still further to say of the actual death of Claudius: "There is surely some confusion in the account of Tacitus, whatever may be the corruption of the text." It might appear here too, on examination, that the confusion is not in the account of Tacitus, but in the mind of his English interpreter. Enough, however, has been said to show that Mr. Merivale is not always very critical in the use of his Tacitus, whose credit he is so fond of assailing. It is, to be sure, a matter of very little moment to know just how the great Cæsar turned to clay, whether at Sinuessa or at Rome, whether half prepared for death by lingering disease, or cut off in the fulness of his strength. But even petty "moles and warts" may offend the eye, and a reprint gives opportunity to remove the little quotation-mistakes, inadvertencies, and human lapses which are to be expected in the original edition.

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5.—*War Powers under the Constitution of the United States.* By WILLIAM WHITING. Tenth Edition. Boston: Little, Brown, & Co. 1864. 8vo.

THE English are fond of charging us with sacrificing all high statesmanship to the idol of a paper constitution. They allege that our legislative debates resemble the squabbles of lawyers over the construction of a contract; that our politics are thus incurably belittled; that there is no scope for genius under such a system, and the soaring wings of statesmanship are cut.

It is true that the disadvantages of our system do lie in the direction thus indicated. It is true that narrow men, small, mole-eyed men, men whose best gift is that of *sharpness*, will argue upon an instrument which was meant to be the perpetual charter of freedom for a self-governing nation, as if it were a contract between two individuals for some momentary and trivial act of common life.

It is true, also, that democratic institutions in their practical work-

ing have proved unfavorable in many ways to the growth of the best sort of statesmen,—so that our written constitutions have often been interpreted—and authoritatively interpreted—by small legislators, who have construed them in a small way, “after their kind.”

Besides this, our constitutions, like all other laws, are the frequent subject of adjudication in the courts, and sometimes they come out of court crippled and shorn of their splendor. Judges are not always statesmen, and they succeed occasionally in impressing upon our charters of government narrow and technical constructions, that are but little in keeping with the great ends which these instruments contemplate.

And, finally, that very love of liberty which is the life of our institutions sometimes renders men over fearful, and disposed to insist on such strict views of our Constitutions as belittle the field and opportunity of statesmanship.

Yet, notwithstanding all this, when has it proved that wise and competent statesmen in this country have been deterred by any superstition about the national Constitution from adopting measures which the good of the nation manifestly demanded? Washington suppressed the Whiskey Insurrection, Jefferson purchased Louisiana, and Lincoln has poured upon the Southern Rebels all the thunderbolts of war; and these things have been “a stumbling-block and foolishness” to many. Yet these great actions were seen to be in harmony with the Constitution, because they were seen to be essential towards the great ends for which, and in subordination to which, the Constitution was made. They were acts enjoined, so to speak, *by the Constitution of the Constitution*. Although there might be no obvious authority for them in the letter of the Constitution, and even though they might appear to be inconsistent with parts of it, yet authority enough was found in their consent and harmony with every main part of the Constitution, ringing, as they clearly did, to the same key-note.

If we can but have men of liberal good-sense to interpret our constitutions, as we always may have, or if we can have great events to enlarge the minds of all of us, such as we have lately had, these instruments will not be found to hamper statesmanship. The war has already educated the whole nation in this respect. Many an act which dull, narrow, and cold-hearted persons esteem unconstitutional, is now seen by most men to be only the application of the principles of the Constitution as against the letter of it,—of the whole Constitution as against a part of it,—of the main or controlling part as against the less important part. Men see that a Constitution which is to last for a thousand years may have a different construction in one age from that which obtains in

another. They see that with the growth of population, the introduction of new manners and institutions, and the decay and disappearance of old ones, — with the growth of knowledge and the elevation of moral ideas, — it is inevitable that there should come also new views of the Constitution. They see that when great wars come upon the nation, — when domestic traitors and foreign enemies are craftily plotting to turn to their own account constitutional restrictions which were laid down for the protection of liberty, — when events occur, as they inevitably will, which never could have been foreseen by the framers of the Constitution, — it is not fitting that the people should be fettered by obsolete constructions of this vital, life-giving, elastic instrument under which they are organized. It was meant to guard and foster the growing strength of a free people for many centuries; and the only sensible or adequate view of the matter is that which commits the application and construction of it from age to age to the ripening intelligence and the growing moral sense of those who from age to age are to live under it.

It is in harmony with such views that Mr. Whiting's book discusses most of the leading questions of constitutional law which have been developed by the war. Although this book is but an ill-digested collection of separate treatises, differing widely in their mode of treatment and in the purpose for which they were written, and marked by a hundred striking faults of style and method, yet there is much acuteness, originality, and courage in its arguments, and it is marked throughout by good-sense in its conception of the principles of constitutional interpretation.

For instance, Mr. Whiting successfully argues for the right of the commander-in-chief, in time of war, summarily to arrest the public enemies and their abettors wherever found, whether single and unarmed, at home in Ohio or assembled in open hostility in Virginia, and to do with them, subject only to the laws of war, whatever the public exigency, in his judgment, may require. With equal success he maintains the right and propriety of setting up military governments in conquered districts, to be the agent and right-hand of the commander-in-chief until peace is recognized.

Again, he contends with justice that the terms and time and manner of reinstating civil government in the rebellious States are questions specially addressing themselves to the sound discretion of the conquerors. He claims, with good reason, that the emancipation of slaves by proclamation of the commander-in-chief may be proper and effectual as a war measure; and in reference to slavery, he insists that the legislative department, in time of peace, under the right of eminent domain,

and no less in time of war, under the right to provide for the common defence and to pass laws in aid of the measures of the commander-in-chief, has the right totally to abolish that institution.

On all of these points we are disposed to think that Mr. Whiting makes out his case. Upon the last one, however, he sometimes indulges in a kind of speculation and reasoning which is perhaps rather strained and over-nice. There are also other parts of the book in which he fails occasionally, in the argument of details, to show that large kind of capacity which seems to be demanded by the subject. He is not quite accurate in his statement (simply as a matter of fact) that it was "authoritatively settled" by the opinions in the "prize causes" that "all the rights of war may be lawfully and constitutionally exercised against all the inhabitants of the seceded States."

There are some interesting points in reference to the relative powers of the commander-in-chief and the legislative department in bringing about a reorganization of the rebellious districts, upon which Mr. Whiting does not enter.

A very interesting part of this book is the thorough and able argument upon the meaning of the second clause of Article III. Sect. 3, of the national Constitution, viz.: "The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted." (By the way, Mr. Whiting never punctuates the clause correctly.) In construing this clause, Mr. Whiting comes to the conclusion,—in our judgment the sound one,—that Congress has power to punish treason by the confiscation of the whole property and estate of the criminal. He argues that the attainder of treason here referred to is a judicial attainder,—one which was a technical consequence following at common law, as of course, upon judgment and sentence passed upon a traitor. The punishment specifically awarded by the sentence is a different thing; whatever that is, there follows immediately, by operation of law, and without judicial mention of it, the consequence of corruption of blood and forfeiture of all property. "There is a clear distinction between the punishment of treason by specific penalties and those consequential damages or injuries which follow by common law as the result or technical effect of a sentence of death or outlawry for treason." Under our Constitution, it is true, the common law of England, as to crimes, does not take effect; and if there should be any attainder at all, it could only be by special provision of law.

The clause in question means, therefore, just this: Congress shall have full power to declare the punishment of treason (including for-

feiture of all property); but no attainder of treason, if any should be enacted, following, as it might happen to do, on some comparatively light judicial sentence, shall work corruption of blood or forfeiture except during the life of the person attainted.

This argument, we may add, gains considerable strength from the fact (which is not distinctly mentioned by Mr. Whiting), that the clause in question is placed in that article of the Constitution which is appropriated to the judicial department. Judge Story, in his Commentaries, refers to this clause as one *relating to the powers of Congress*, which, "for no apparent reason, is put out of its proper position." But if Mr. Whiting's construction of the clause be the true one, it is obviously in its right place where it is, — as being, in the main drift of it, a limitation on the power of *the judiciary*, — or rather, to speak more exactly, a restriction of the usual effect of a certain judicial act.

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6.—*Engineer and Artillery Operations against the Defences of Charleston Harbor in 1863.* By Q. A. GILLMORE, Major of Engineers, Major-General of Volunteers, and Commanding General of the Land Forces engaged. New York: D. Van Nostrand. 1865.

THIS book is "published by authority." It is a handsome octavo volume of three hundred and fifty well-printed pages. It is illustrated by seventy-six plates and engraved views. It is uniform in style with the series of octavos on military subjects which Mr. Van Nostrand has been for some time issuing, and whose red-cloth covers are becoming familiar and welcome.

General Gillmore's Report to the general-in-chief, somewhat enlarged in preparing it for publication, makes rather more than one third of the text. The rest is composed mainly of Reports of General Gillmore's Chief of Staff and of Artillery, and the engineer officers under his command.

General Gillmore commences his Report with a brief statement of the position of Charleston, a description of its harbor, and an account of the fortifications in the harbor before the war. We learn from it one fact of interest. At the commencement of the war Fort Sumter was an unfinished work. None of the embrasures of the second tier had been finished, and Major Anderson's command walled up with brick the openings left for them, and the enemy afterwards allowed them to remain in that condition.

The Report next gives the plan of operations against the defences of Charleston, which was to take possession of Morris Island, to besiege